

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SAMUEL PADILLA-RIVAS,

Case No. 3:17-cv-00100-AA

Plaintiff,

ORDER

v.

FEDERAL EMPLOYER, (USMS)

Defendants.

AIKEN, District Judge:

Plaintiff, an inmate at a Georgia correctional facility, filed suit for injuries allegedly sustained while in the custody of the United States Marshals Service (USMS). Plaintiff alleged negligence and the court construed his complaint as a claim under the Federal Tort Claims Act (FTCA). *See* 28U.S.C. § 2675. The court noted, however, that plaintiff failed to allege the jurisdictional requirement of exhaustion – that he had presented his claim to the appropriate federal agency before filing suit. *Id.* § 2675(a). The court allowed plaintiff to file an amended complaint to cure the deficiency.

In his amended complaint, plaintiff instead alleged deliberate indifference to his serious medical needs in violation of the Eighth Amendment. *See Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) (providing a cause of action for damages arising from constitutional violations by federal officials). Even though plaintiff failed to allege that he sought administrative exhaustion of his Eighth Amendment claim, unlike the FTCA, exhaustion of a *Bivens* action is not jurisdictional. However, plaintiff's claims were filed beyond the relevant two-year statute of limitations, and plaintiff was ordered to show cause in writing why this case should not be dismissed for the failure to file suit within two years of his injury.

In response, plaintiff realleges both his FTCA claim and his *Bivens* claims and explains that his transfer between correctional institutions prevented him from filing his claim within two years of his injury. However, plaintiff states that he was at one correctional facility for one year and another for nine months before being transferred; I therefore cannot find a basis for equitable tolling with respect to his *Bivens* claim. Further, his submissions fail to show that he exhausted his administrative remedies to allow his FTCA claim. Accordingly, this action is DISMISSED.

IT IS SO ORDERED.

DATED this 21st day of December, 2017.



Ann Aiken
United States District Judge